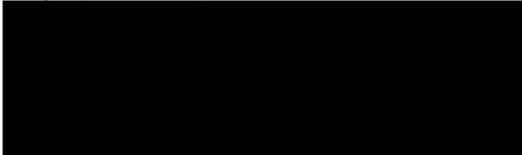




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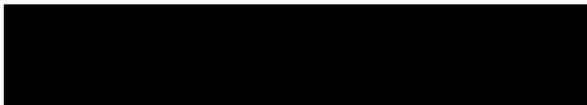
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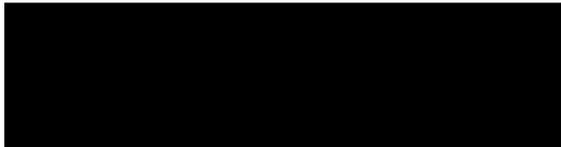
File: EAC 06 244 52998 Office: VERMONT SERVICE CENTER Date: SEP 06 2007

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Nevada corporation, states that it is engaged in real estate development. The petitioner claims to be a subsidiary of [REDACTED], located in Manila, Philippines. The beneficiary was initially granted a one-year period in L-1A status to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay for three additional years.

The director denied the petition concluding that petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity with the United States entity.

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the director abused her authority by basing her decision on assumptions or speculation, without considering the evidence submitted. The petitioner further asserts that the director erroneously determined that the beneficiary would not be supervising professional employees. The petitioner submits a brief in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The sole issue addressed by the director is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity under the extended petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be

acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant petition was filed on August 28, 2006. The petitioner indicated on Form I-129 that it employs two workers. In a letter dated August 22, 2006, the petitioner provided the following description of the beneficiary's position:

[The beneficiary] shall continue to serve as President of the company. As President, she will continue to supervise and control the operations of the company, including hiring, and firing of employees. Moreover, she shall continue to direct marketing strategies and formulate financial plans for all business operations. [The beneficiary] will continue to establish company policies and overall operational guidelines and continue to exercise wide latitude with regard to personnel management. Furthermore, [the beneficiary] will continue to review all financial reports and budget plans and will continue to negotiate contracts with potential buyers.

The petitioner stated that the U.S. company was established in 2005 in order to market commercial and residential real estate projects located in the Philippines to investors in the United States. The petitioner submitted its federal and state payroll records for the four quarters preceding the filing of the petition, which indicated that the beneficiary is the company's only payroll employee.

The petitioner also submitted an agreement between the petitioner and [REDACTED] wherein [REDACTED] would act as the petitioner's agent for the purpose of marketing the petitioner's parent company's housing projects in the Philippines for an eight percent sales commission.

On September 11, 2006, the director requested additional evidence to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. Specifically, the director instructed the petitioner to provide: (1) evidence that establishes the duties performed by the beneficiary in the past year and the duties she will perform if the petition is extended; (2) evidence of the staffing of the U.S. organization, including the number of employees, the duties they perform, and the

company's management and personnel structure; (3) the amount of time the beneficiary will devote to executive/managerial duties versus other non-qualifying functions; (4) a comprehensive description of the beneficiary's proposed duties; and (5) a complete job description for each employee of the company, including a breakdown of the number of hours devoted to each of the employee's job duties on a weekly basis.

The petitioner submitted the following statement in response to the director's request for a comprehensive description of the beneficiary's duties:

The beneficiary is thus entrusted with decision making for any purchase of property to be done in the US. She recently attended a land auction for foreclosed properties and although she lost out on the bid to purchase a 5 acre property in Clark County, Nevada and in Kern County, California, she was able to acquire a small half acre lakeside vacation property in Georgia. She has presently been authorized to purchase property in California City, CA or in Palmdale, CA. This transaction is still in progress. Choosing of the proper mortgage company with regards to purchasing this property will be the decision of the beneficiary. Due to the absence of other members of the board, the sole decision regarding choice of investments would rest on her foresight. Expansion plans also include either purchase or construction of a commercial building within Las Vegas, Clark County, Nevada or Henderson, Nevada. Construction loans will also be decided by her later on. These plans were visualized and planned by the beneficiary, presented to the board and approved. The beneficiary will definitely need a couple or more years to attain the company's goal.

* * *

Basic managerial decisions like banking, hiring of personnel or consultants, enlisting of agents and the like, choice of accountant and tax preparer, contractors, office expenses such as purchase of office equipments and budgeting etc. are all duties dependent on the beneficiary's ability to govern.

The petitioner indicated that the beneficiary's subordinates include the following staff:

██████████ Secretary – In the event that the General Manager is unable or is absent from performing her basic duties, the secretary is authorized to take over and/or assist the GM. He shall be allowed to access the bank account as co-signatory. He is the only other personnel besides the GM, that will be allowed access to the account.

██████████ CPA: Accountant – The accountant will handle all collections, payroll, billing and tax duties by the company. This service does not require full time employment.

██████████ Project Coordinator – All shows and events will be under the direction or [sic] ██████████ He will be authorized to hire contractual personnel according to his need. For example; hiring of stage crew, carpenters, sound technicians, Light technician etc. for a Show. All projected expenses will be reported by him to the GM and Secretary for approval

before being presented to the client or producer. For trade fairs and/or housing fairs, he will be in charge of setting up the booths especially the sales booth of [the petitioner]. Sales presentations, shows, functions will be directed and later edited under his direction. For marketing and promotions for recording companies, [REDACTED] will also take charge of conceptualizing a tailor made "product promotions package" for each client.

Sales Agents: Sales agents shall be paid 6% of commissions from Philippine real estate sales. Agents will not be required to have a real estate license for promoting Philippine based properties since all closings will be done in the Philippines as required by law. Commissions coming from event shows and trade fairs will be 10% from tickets, sponsors, advertisers, and CD's sold. A 5% referral fee shall also be compensated to agents who have referred a client or an investor to the company.

The petitioner provided an organizational chart showing the beneficiary's supervision of the secretary, who in turn is depicted as supervising the accountant, project coordinator and sales agents. The petitioner identified its sales agents as: That's Entertainment, Inc.; YC Realty, LLC; Countrywide Realty; [REDACTED] and "other agents."

As evidence of payment to the listed employees, the petitioner provided a copy of the company's check register, which shows payments in the amount of \$170.00 and \$500.00 to [REDACTED] on November 5, 2006 and September 30, 2006, respectively, as well as two payments to the company accountant.

The petitioner also submitted an agreement between the U.S. company and Applause!Entertainment, a Philippines company, whereby Applause!Entertainment agrees to provide the services of Filipino artists and musicians for concerts abroad. The agreement was signed on October 5, 2006, and executed by [REDACTED] on behalf of Applause!Entertainment. In addition, the petitioner provided an agency agreement between the petitioner and [REDACTED] dated October 1, 2006, which is similar to the contract with YC Realty, LLC, described above.

The director denied the petition on December 18, 2006, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director acknowledged the position descriptions submitted for the beneficiary's subordinates, but found that the duties outlined would not require the skills of bona fide professionals. The director determined that the beneficiary would not manage a function or manage a subordinate staff of subordinate managers, professionals or supervisors.

The director noted that while the petitioner listed a number of duties that would normally be required of or associated with a manager or executive, "this service is not convinced that the beneficiary will actually be carrying out these duties." The director concluded that the petitioner does not appear to require a bona fide manager or executive who would perform the listed tasks on a full-time basis.

On appeal, the petitioner asserts that the director conceded that the beneficiary's duties are managerial in nature, but provided no basis for concluding that the beneficiary would not actually perform the stated duties.

The petitioner asserts that the director is obligated to base her conclusions on the evidence submitted, and states that "a conclusion based on an assumption or speculation is an abuse of authority."

The petitioner further asserts that the director erroneously concluded that the beneficiary's subordinates are not professionals. The petitioner refers to the Department of Labor's *Occupational Outlook Handbook* in support of its assertion that both the accountant and the project coordinator are professionals.

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. Preliminarily, although the director's conclusions were appropriate based on the evidence submitted, the AAO notes that when denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

Upon review of the director's decision, the AAO agrees with the petitioner that the reasons given for the denial are conclusory with few specific references to the evidence entered into the record. The director did not articulate a basis for concluding that the beneficiary does not primarily perform the managerial or executive duties attributed to her. As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner has provided a vague description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner's statements that the beneficiary will "supervise and control the operations of the company," "establish company policies and overall operational policy guidelines," and "exercise wide latitude," merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Furthermore, the beneficiary's responsibilities for formulating marketing strategies and negotiating contracts with potential buyers suggest that she is directly involved in the sales and marketing operations of the company, particularly in light of the evidence submitted in support of the initial petition, which showed that she is the company's sole payroll employee. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The evidence submitted with the petition fell significantly short of establishing that the beneficiary would be employed in a primarily managerial or executive capacity, as the petitioner did not include an adequate statement of the duties to be performed by the beneficiary under the extended petition, nor did it include a statement describing the staffing of the new operation, indicate the number of employees and the types of positions they hold, or include evidence of wages paid to employees. See 8 C.F.R. §§ 214.2(l)(14)(ii)(C) and (D).

The director reasonably requested a comprehensive description of the beneficiary's duties and requested that the petitioner indicate the number of hours the beneficiary devotes to each of her duties on a weekly basis. The petitioner's response focused on the beneficiary's level of authority, without describing any actual duties performed by her on a day-to-day basis. The AAO does not doubt that the beneficiary, as the petitioner's president and sole full-time employee, has the authority to make purchasing decisions, determine the petitioner's office location, and contract for the services of consultants and agents. However, the definitions of executive and managerial capacity have two separate requirements. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

It is insufficient for the petitioner to state that the beneficiary has the authority to make all managerial decisions without explaining the specific tasks she typically performs as president of the petitioning company. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Moreover, the director specifically requested an account of how the beneficiary allocates her time among specific duties on a weekly basis and the petitioner neglected to respond to this request. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because some of the beneficiary's daily tasks, such as negotiating contracts with buyers, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing managerial duties. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Furthermore, the petitioner's vague description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible depiction of the beneficiary's role within the petitioner's organizational hierarchy, in light of the nature of the petitioner's business. Upon review of the record, the petitioner has not described the company's business activities in a manner that allows for a clear understanding of the type of business operated by the U.S. company as of the date of filing, and thus there is limited context in which to view the claimed job duties of the beneficiary and those of her subordinate employees.

At the time of filing, the petitioner claimed to be engaged in marketing and locating U.S. buyers for properties developed by the foreign entity in the Philippines. The petitioner claimed to have two employees, submitted a single sales agency agreement, and provided evidence of payments to a single payroll employee, the beneficiary. In response to the request for evidence, the petitioner indicated that the petitioner would also be purchasing U.S. properties, as well as providing other marketing and promotion services, including providing Filipino artists and musicians for foreign concerts. According to the job description for the project coordinator, his duties would also involve marketing and promotions for recording companies, organizing shows and events, and setting up booths for trade shows. None of these business activities have been documented in the record and there is no evidence that the petitioner's activities had expanded at the time of filing. Moreover, the petitioner's relationship with the project coordinator, [REDACTED] and the majority of the individuals and entities described as "sales agents" as of the date of filing has not been established. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The lack of explanation and evidence regarding the beneficiary's duties and the nature and scope of the petitioner's business activities as of the date of filing further precludes a finding that the beneficiary will be performing primarily managerial or executive duties under the extended petition.

Although the petitioner claims to employ the beneficiary's spouse as its secretary, it does not appear that he has filed an application for employment authorization with his request for an extension of his L-2 status, and there is no evidence of any wages paid to him during the first year of operations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, although the petitioner submitted a sales agency agreement with YC Realty, LLC signed in February 2006, prior to the date of filing, the petitioner did not provide evidence of any commissions paid to the agent.

Therefore, other than the contracted accountant, the petitioner has not adequately documented the employment of the individuals identified on the organizational chart. Based on the evidence submitted, the petitioner's accountant operates her own firm and provides certain tax preparation services for the petitioning company. While the petitioner utilizes the services of an accountant, a distinction must be drawn between regularly supervising employees and occasionally working with an outside professional in order to accomplish a specific task. Additionally, the petitioner has not explained how the services of the contracted employees obviate the need for the beneficiary, as the sole employee of the company, to primarily conduct the

business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Therefore, while the services provided by an accountant may be professional in nature, the petitioner has not established that the beneficiary spends a significant portion of her time on a day-to-day basis supervising an independently contracted accountant. As discussed above, the petitioner's other claimed professional employee, the project coordinator, has not been established as a company employee or contractor as of the date of filing. The petitioner has not established that the beneficiary is a managerial employee based on her supervision of a subordinate staff of supervisory, professional, or managerial employees. See § 101(a)(44)(A)(ii) of the Act.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must clearly describe the duties to be performed in managing the essential function, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). Furthermore, whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are primarily managerial. Here, the petitioner has neither claimed nor presented evidence that the beneficiary manages a function, and, as discussed above, the petitioner did not establish that the beneficiary's duties are primarily managerial.

The AAO acknowledges that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In this matter, to the extent that the petitioner was doing business at the time of filing, it is evident that the company would reasonably require the beneficiary to participate in the day-to-day non-managerial aspects of the company. The petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

The AAO acknowledges the petitioner's claims that it intends to expand its business operations and evidence that it has perhaps begun this expansion subsequent to the filing of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, as noted above, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this

one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity. For this reason, the appeal will be dismissed.

Although not addressed by the director, the record does not contain sufficient evidence that the petitioner has been engaged in the regular, systematic, and continuous provision of goods and/or services in the United States for the entire year prior to filing the petition to extend the beneficiary's status as required by 8 C.F.R. § 214.2(l)(14)(ii)(B), or evidence of the financial status of the U.S. company as required by 8 C.F.R. § 214.2(l)(14)(ii)(E). The petitioner has submitted a number of reservation application forms completed by potential buyers of properties in the Philippines, but the petitioner's role in these transactions is unclear. The petitioner's bank statements for the previous year show limited activity, and the record contains no financial statements or tax returns for the first year of operations. There is insufficient evidence that the petitioner has consistently provided goods or services or generated income since the approval of the beneficiary's initial petition in September 2005. The petitioner has not established that it has been regularly doing business during the first year of operations. For this additional reason, the petition cannot be approved.

Finally, the AAO notes that the petitioner has not submitted evidence that it maintains a qualifying relationship with its claimed parent company in the Philippines, as required by 8 C.F.R. § 214.2(l)(14)(ii)(A). The record contains no evidence of the ownership and control of the petitioning company. As the director did not request this required initial evidence, the AAO notes this deficiency for the record and will not discuss this issue further.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.